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FILED	RECEIVED
ENTERED	SERVED ON
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JUL 12 2016	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY: _____	DEPUTY

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25  
26 UNITED STATES DISTRICT COURT  
27 DISTRICT OF NEVADA

28 WESTERN EXPLORATION LLC, et al.,

29 Case No. 3:15-cv-00491-MMD-VPC

30 Plaintiffs,

31 STIPULATED PROTECTIVE ORDER

32 v.

33 U.S. DEPARTMENT OF THE INTERIOR,  
34 et al.,

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3 **Defendants.**

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5 This Stipulated Protective Order has been agreed to by the Plaintiffs and Defendants in  
6 the above-captioned action. The Intervenor Defendants have advised that they do not need to see  
7 the information that has been identified as confidential, agree they will not be provided the  
8 confidential information, will not be subject to this Stipulated Protected Order, and do not object  
9 to the filing of this Stipulated Protective Order without their signatures. This Stipulated  
10 Protective Order is agreed to by and among Plaintiff Western Exploration, LLC, and Defendants  
11 U.S. Department of the Interior *et al.* (“Party” and/or collectively, the “Parties”) in the case  
12 captioned *Western Exploration, LLC vs. U.S. Department of the Interior, et al.*, pending as  
13 Docket No. 3:15-cv-00491-MMD-VPC in the United States District Court for the District of  
14 Nevada (the “Litigation”), and their respective counsel. Each of these Parties to the Litigation  
15 and their respective counsel hereby agree to be bound by the terms of this Stipulated Protective  
16 Order.

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19 1. Plaintiff Western Exploration, LLC (“WEX”) filed a Motion to File Exhibit to  
20 Plaintiffs’ Reply in Support of Motion for Summary Judgment Under Seal on June 13, 2016  
21 (ECF 81) which seeks an order allowing WEX to file an unredacted copy of the Declaration of  
22 Marceau Schlumberger (“Declaration”) under seal, and to publicly file a redacted copy of the  
23 Declaration, because the declaration contains confidential business information of WEX that if  
24 disclosed would cause competitive harm to WEX, and confidential business information of third  
25 parties. Defendants are required to protect this confidential information in accordance with  
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2 applicable laws and regulations, including Exemption 4 of the Freedom of Information Act, 5  
3 U.S.C. §552(b)(4), and the Trade Secrets Act, 18 U.S.C. § 1905. Nothing in this Protective  
4 Order shall be construed to limit the authority of the United States to undertake any action  
5 pursuant to applicable law or regulation.  
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7 2. This Protective Order is intended to cover said sensitive information which is  
8 contained in the Declaration (hereinafter, the "Confidential Information").

9 3. The Parties and their respective counsel shall hold in trust and confidence, and not  
10 disclose to others, any Confidential Information which has been or is disclosed by WEX.  
11 Confidential Information shall not be used by counsel or any other person for any purpose other  
12 than the defense of this action. This paragraph shall survive and continue after any expiration or  
13 termination of this Protective Order and shall bind the Parties.  
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15 A. The undertakings and obligations of the Parties under this Protective Order shall  
16 not apply to any information which is produced that is available to the public, or  
17 is otherwise in the public domain through no action or fault of the Parties.

18 B. The Parties agree to store the Confidential Information securely and to ensure  
19 appropriate measures are taken to protect against the unauthorized or unintended  
20 access, use or disclosure of the Confidential Information.

21 C. The Parties agree that, except as provided in this Protective Order, they will not  
22 copy or reproduce the Confidential Information mechanically, digitally or  
23 otherwise, or disseminate the Confidential Information to any third party other  
24 than their respective counsel unless required to do so in connection with a  
25 submission to the Court in camera.  
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D. In the event the Parties are required to disclose the Confidential Information to experts they may hire or agency personnel, the Parties may disclose the Confidential Information to their experts or agency personnel only after such experts agree in writing to be bound by this Protective Order, pursuant to the form attached hereto as Exhibit A, affirming that the recipient: (i) has read this Order and understands all of its terms; (ii) agrees to abide by and to be bound by the terms of this Order; (iii) agrees to submit to the Court's jurisdiction, for purposes of enforcement of this Order by proceedings for contempt and/or proceedings for legal and/or equitable relief, including damages, for a breach thereof. Counsel shall retain such Confidentiality Agreement until such time as the litigation, including all appeals, is concluded and counsel has retrieved all Confidential Information from the recipient pursuant to this Order. Counsel are responsible for ensuring that their legal, paralegal, clerical staff, and their experts or consultants and any agency personnel comply with this Order.

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E. The Parties hereto further agree to the following terms and conditions:

i. Any breach by the Parties (or their counsel or their experts) of any obligations under this Protective Order may result in irreparable injury to WEX for which damages and other legal remedies could be inadequate. In seeking enforcement of any of these obligations, WEX may seek (in addition to other remedies) to preliminary and permanent injunctive and other equitable relief to prevent, discontinue and/or restrain the breach of this Protective Order.

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ii. Subject to the procedures set forth herein, no documents containing, or otherwise disclosing Confidential Information shall be publicly filed with the Court. Confidential Information shall be submitted to the Court under seal as follows: (a) the original signed copy of any pleadings containing, referring to, or otherwise disclosing Confidential Information shall be electronically filed with the Clerk of the Court in the normal manner under the Local Rules of this Court, but the Confidential Information contained, referred to, or otherwise disclosed therein shall be redacted (and bear the stamp “redacted”) so that it does not appear in the publicly filed copy of the pleading or filing; and (ii) unless otherwise permitted by statute, rule or prior court order, the party shall electronically file the unredacted document under seal, along with a contemporaneous motion for leave to file those documents under seal, consistent with and following the court’s electronic filing and service procedures in Local Rule IA 10-5. Notwithstanding any agreement among the parties, the party seeking to file a paper under seal bears the burden of overcoming the presumption in favor of public access to papers filed in court. *Kamakana v. City and County of Honolulu*, 447 F.2d 1172 (9th Cir. 2006); *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 677-78 (9th Cir. 2010). After filing the document under seal, the filing party shall file a Notice of Filing Under Seal.

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iii. This Protective Order in no way affects or relieves any party of its  
responsibility to comply with any federal, state or local law or regulation.

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Nothing in this Protective Order alters the rights and/or liabilities of the  
parties with respect to the litigation.

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iv. This Protective Order shall govern all proceedings in this action and  
survive the termination of the case and is binding on all parties until  
further notice of the Court.

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v. Within ninety (90) days of the closing or dismissal of the Litigation, the  
Defendants and Intervenors and any of the Defendants' and Intervenors'  
experts who have executed Exhibit A to the Protective Order shall return  
to WEX, through WEX's undersigned counsel, all hard copies of the  
Confidential Information and shall certify in writing to WEX that they  
have made their best efforts to permanently delete or otherwise destroy all  
electronic copies in the possession or control of that party to the Protective  
Order. All counsel of record who received Confidential Information shall  
make certification of compliance herewith and shall deliver the same to  
the producing party not more than 90 days after final termination of this  
litigation, including all appeals. Counsel, including any person who  
obtained access to the Confidential Information pursuant to this Order,  
shall be barred from disclosing such information thereafter.

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2       vi. The Court may sanction counsel, their staff, or any person who obtained

3           access to the Confidential Information pursuant to this Order, as

4           appropriate for violation of this Order.

5       vii. Subject to the Federal Rules of Evidence, Confidential Information may

6           be offered at any court hearing, provided that the proponent of the

7           evidence gives reasonable notice to all counsel and to the Court. Any

8           party may move the Court for an order that the evidence be received in

9           camera or under other conditions to prevent unauthorized disclosure.

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11       IN WITNESS WHEREOF, the parties have executed this Protective Order as of the date

12       first above written.

13       Respectfully submitted this 22<sup>nd</sup> day of June, 2016.

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15       DATED: June 22, 2016

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17       **Davis Graham & Stubbs LLP**

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19       By: /s/ Laura K. Granier  
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*Attorneys for Counties and Private Plaintiffs*

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19       DATED: June 22, 2016

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21       By: /s/ Lawrence VanDyke  
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*Attorneys for Plaintiff State of Nevada*

DATED: June 22, 2016

DATED: June 22, 2016

By: /s/ Michael W. Large  
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*Attorneys for Defendants*

## IT IS SO ORDERED:

## United States Magistrate Judge

Dated: July 12, 2016

**EXHIBIT A**

## **CONFIDENTIALITY AGREEMENT**

I, \_\_\_\_\_ hereby acknowledge, agree and certify under penalty of perjury that:

1. I have read the Stipulated Protective Order entered in the *Western Exploration, LLC vs. U.S. Department of the Interior, et al.*, pending as Docket No. 3:15-cv-00491-MMD-VPC in the United States District Court for the District of Nevada (the "Litigation") (the "Order").

**2. I understand the terms of the Order.**

3. I hereby agree to be bound by the terms of the Order and understand that a violation thereof may subject me to contempt proceedings and to legal and equitable remedies, including damages.

4. I understand and agree that money damages would not be a sufficient remedy for breach of this Order and that a party that asserts the confidential interest shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. I agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Order but shall be in addition to all remedies available at law or equity.

5. I hereby irrevocably submit to the jurisdiction of the United States District Court for the District of Nevada, or any other court of competent jurisdiction, for purposes of ensuring compliance with the terms and conditions of the Order and for civil remedies in the form of legal and equitable relief, including damages, for any breach thereof.

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**Signature:** \_\_\_\_\_

**CERTIFICATE OF SERVICE**

Pursuant to F.R.C.P. 5(b), I certify that I am an employee of Davis Graham & Stubbs LLP and not a party to, nor interested in, the within action; that on the 22<sup>nd</sup> day of June, 2016, a true and correct copy of the foregoing document was transmitted electronically to the following via the Court's e-filing electronic notice system:

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*/s/ Jeanette Sparks*

Jeanette Sparks